

AMENDED IN SENATE APRIL 20, 2005

AMENDED IN SENATE APRIL 19, 2005

**SENATE BILL**

**No. 358**

**Introduced by Senator Scott**  
(Principal coauthor: Assembly Member Leno)

February 16, 2005

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An act to amend Section 1522 of the Health and Safety Code, and to amend Section 362.05 of the Welfare and Institutions Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

SB 358, as amended, Scott. Child care.

(1) Existing law requires, as a condition of the State Department of Social Services or other licensing agency issuing a license, permit, or certificate of approval, as appropriate, for a person to operate or to provide direct care services in a community care facility, residential care facility for persons with a chronic life-threatening illness, residential care facility for the elderly, or child day care facility, the fingerprinting of, and criminal record clearance for, applicants and persons to be employed by, reside at, or be present in any of these facilities, except as specified.

This bill would ~~further~~ exempt from those requirements individuals engaged by a licensed or certified foster parent to supervise a foster child for periods not exceeding 24 hours. *The bill would further exempt from any regulation requiring health screening or cardiopulmonary resuscitation certification or training, adult friends and family of a licensed or certified foster parent, parents of a foster child's friends, and individuals engaged by any licensed or certified foster parent, when supervising a foster child.* The bill would also

hold caregivers to a reasonable and prudent parent standard in the selection of babysitters, as specified.

(2) Existing law provides that every dependent child shall be entitled to participate in age-appropriate extracurricular, enrichment, and social activities, and that state and local regulations and policies may not prevent or create barriers to participation in those activities. Existing law also requires state and local entities to ensure that private agencies that provide foster care services to dependent children, promote and protect the ability of dependent children to participate in those activities.

This bill would authorize any licensed or certified foster parent, relative caregiver, or nonrelative extended family member to arrange occasional short-term babysitting for a foster child. The bill would require those caretakers to use a reasonable and prudent parent standard when, and to take reasonable steps in, selecting that babysitter.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature to streamline  
2 the process by which foster parents, relative caregivers, and  
3 adoptive parents become licensed by the state, while ensuring the  
4 safety and security of children in their care. Duplicative  
5 background checks and fingerprinting, now required under  
6 current law and regulation, should be eliminated in a manner that  
7 both expedites permanent planning and protects foster children.

8 SEC. 2. Section 1522 of the Health and Safety Code is  
9 amended to read:

10 1522. The Legislature recognizes the need to generate timely  
11 and accurate positive fingerprint identification of applicants as a  
12 condition of issuing licenses, permits, or certificates of approval  
13 for persons to operate or provide direct care services in a  
14 community care facility, foster family home, or a certified family  
15 home of a licensed foster family agency. Therefore, the  
16 Legislature supports the use of the fingerprint live-scan  
17 technology, as identified in the long-range plan of the  
18 Department of Justice for fully automating the processing of  
19 fingerprints and other data by the year 1999, otherwise known as

the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04 and 2004-05 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

1 (C) If no criminal record information has been recorded, the  
2 Department of Justice shall provide the applicant and the State  
3 Department of Social Services with a statement of that fact.

4 (D) If the State Department of Social Services finds after  
5 licensure that the licensee, or any other person specified in  
6 paragraph (2) of subdivision (b), has been convicted of a crime  
7 other than a minor traffic violation, the license may be revoked,  
8 unless the director grants an exemption pursuant to subdivision  
9 (g).

10 (E) An applicant and any other person specified in subdivision  
11 (b) shall submit a second set of fingerprints to the Department of  
12 Justice for the purpose of searching the criminal records of the  
13 Federal Bureau of Investigation, in addition to the criminal  
14 records search required by this subdivision. If an applicant and  
15 all other persons described in subdivision (b) meet all of the  
16 conditions for licensure, except receipt of the Federal Bureau of  
17 Investigation's criminal history information for the applicant or  
18 any of the persons described in subdivision (b), the department  
19 may issue a license if the applicant and each person described in  
20 subdivision (b) has signed and submitted a statement that he or  
21 she has never been convicted of a crime in the United States,  
22 other than a traffic infraction, as defined in paragraph (1) of  
23 subdivision (a) of Section 42001 of the Vehicle Code. If, after  
24 licensure, the department determines that the licensee or any  
25 other person specified in subdivision (b) has a criminal record,  
26 the license may be revoked pursuant to Section 1550. The  
27 department may also suspend the license pending an  
28 administrative hearing pursuant to Section 1550.5.

29 (b) (1) In addition to the applicant, this section shall be  
30 applicable to criminal convictions of the following persons:

31 (A) Adults responsible for administration or direct supervision  
32 of staff.

33 (B) Any person, other than a client, residing in the facility.

34 (C) Any person who provides client assistance in dressing,  
35 grooming, bathing, or personal hygiene. Any nurse assistant or  
36 home health aide meeting the requirements of Section 1338.5 or  
37 1736.6, respectively, who is not employed, retained, or  
38 contracted by the licensee, and who has been certified or  
39 recertified on or after July 1, 1998, shall be deemed to meet the  
40 criminal record clearance requirements of this section. A certified

1 nurse assistant and certified home health aide who will be  
2 providing client assistance and who falls under this exemption  
3 shall provide one copy of his or her current certification, prior to  
4 providing care, to the community care facility. The facility shall  
5 maintain the copy of the certification on file as long as care is  
6 being provided by the certified nurse assistant or certified home  
7 health aide at the facility. Nothing in this paragraph restricts the  
8 right of the department to exclude a certified nurse assistant or  
9 certified home health aide from a licensed community care  
10 facility pursuant to Section 1558.

11 (D) Any staff person, volunteer, or employee who has contact  
12 with the clients.

13 (E) If the applicant is a firm, partnership, association, or  
14 corporation, the chief executive officer or other person serving in  
15 like capacity.

16 (F) Additional officers of the governing body of the applicant,  
17 or other persons with a financial interest in the applicant, as  
18 determined necessary by the department by regulation. The  
19 criteria used in the development of these regulations shall be  
20 based on the person's capability to exercise substantial influence  
21 over the operation of the facility.

22 (2) The following persons are exempt from the requirements  
23 applicable under paragraph (1):

24 (A) A medical professional as defined in department  
25 regulations who holds a valid license or certification from the  
26 person's governing California medical care regulatory entity and  
27 who is not employed, retained, or contracted by the licensee if all  
28 of the following apply:

29 (i) The criminal record of the person has been cleared as a  
30 condition of licensure or certification by the person's governing  
31 California medical care regulatory entity.

32 (ii) The person is providing time-limited specialized clinical  
33 care or services.

34 (iii) The person is providing care or services within the  
35 person's scope of practice.

36 (iv) The person is not a community care facility licensee or an  
37 employee of the facility.

38 (B) A third-party repair person or similar retained contractor if  
39 all of the following apply:

40 (i) The person is hired for a defined, time-limited job.

1 (ii) The person is not left alone with clients.

2 (iii) When clients are present in the room in which the  
3 repairperson or contractor is working, a staff person who has a  
4 criminal record clearance or exemption is also present.

5 (C) Employees of a licensed home health agency and other  
6 members of licensed hospice interdisciplinary teams who have a  
7 contract with a client or resident of the facility and are in the  
8 facility at the request of that client or resident's legal  
9 decisionmaker. The exemption does not apply to a person who is  
10 a community care facility licensee or an employee of the facility.

11 (D) Clergy and other spiritual caregivers who are performing  
12 services in common areas of the community care facility or who  
13 are advising an individual client at the request of, or with the  
14 permission of, the client or legal decisionmaker, are exempt from  
15 fingerprint and criminal background check requirements imposed  
16 by community care licensing. This exemption does not apply to a  
17 person who is a community care licensee or employee of the  
18 facility.

19 (E) Members of fraternal, service, or similar organizations  
20 who conduct group activities for clients if all of the following  
21 apply:

22 (i) Members are not left alone with clients.

23 (ii) Members do not transport clients off the facility premises.

24 (iii) The same organization does not conduct group activities  
25 for clients more often than defined by the department's  
26 regulations.

27 (3) In addition to the exemptions in paragraph (2), the  
28 following persons in foster family homes, certified family homes,  
29 and small family homes are exempt from the requirements  
30 applicable under paragraph (1) *and from any department*  
31 *regulation requiring health screening or cardiopulmonary*  
32 *resuscitation certification or training:*

33 (A) Adult friends and family of ~~any~~ *the* licensed or certified  
34 foster parent, who come into the home to visit for a length of  
35 time no longer than defined by the department in regulations,  
36 provided that the adult friends and family of the licensee are not  
37 left alone with the foster children, ~~except when~~. *However, the*  
38 *licensee, acting as a reasonable and prudent parent, would allow*  
39 *them may allow his or her adult friends and family to supervise*

1 the foster child and act as an appropriate occasional short-term  
2 babysitter for the child.

3 (B) Parents of a foster child's friends when the foster child is  
4 visiting the friend's home and the friend, licensed or certified  
5 foster parent, or both are also present, ~~except when~~. *However*, the  
6 licensee, acting as a reasonable and prudent parent, ~~allows the~~  
7 ~~foster child to visit the friend's home~~ *may allow the parent of the*  
8 *foster child's friends to act as an appropriate short-term*  
9 *babysitter for the child* without the friend being present.

10 (C) Individuals who are engaged by any licensed or certified  
11 foster parent to supervise the child for periods not to exceed 24  
12 hours. Caregivers shall use a reasonable and prudent parent  
13 standard in selecting appropriate individuals to act as appropriate  
14 occasional short-term babysitters.

15 (4) In addition to the exemptions specified in paragraph (2),  
16 the following persons in adult day care and adult day support  
17 centers are exempt from the requirements applicable under  
18 paragraph (1):

19 (A) Unless contraindicated by the client's individualized  
20 program plan (IPP) or needs and service plan, a spouse,  
21 significant other, relative, or close friend of a client, or an  
22 attendant or a facilitator for a client with a developmental  
23 disability if the attendant or facilitator is not employed, retained,  
24 or contracted by the licensee. This exemption applies only if the  
25 person is visiting the client or providing direct care and  
26 supervision to the client.

27 (B) A volunteer if all of the following applies:

28 (i) The volunteer is supervised by the licensee or a facility  
29 employee with a criminal record clearance or exemption.

30 (ii) The volunteer is never left alone with clients.

31 (iii) The volunteer does not provide any client assistance with  
32 dressing, grooming, bathing, or personal hygiene other than  
33 washing of hands.

34 (5) (A) In addition to the exemptions specified in paragraph  
35 (2), the following persons in adult residential and social  
36 rehabilitation facilities, unless contraindicated by the client's  
37 individualized program plan (IPP) or needs and services plan, are  
38 exempt from the requirements applicable under paragraph (1): a  
39 spouse, significant other, relative, or close friend of a client, or an  
40 attendant or a facilitator for a client with a developmental

1 disability if the attendant or facilitator is not employed, retained,  
2 or contracted by the licensee. This exemption applies only if the  
3 person is visiting the client or providing direct care and  
4 supervision to that client.

5 (B) Nothing in this subdivision shall prevent a licensee from  
6 requiring a criminal record clearance of any individual exempt  
7 from the requirements of this section, provided that the  
8 individual has client contact.

9 (6) Any person similar to those described in this subdivision,  
10 as defined by the department in regulations.

11 (c) (1) Subsequent to initial licensure, any person specified in  
12 subdivision (b) and not exempted from fingerprinting shall, as a  
13 condition to employment, residence, or presence in a community  
14 care facility, be fingerprinted and sign a declaration under  
15 penalty of perjury regarding any prior criminal convictions. The  
16 licensee shall submit these fingerprints to the Department of  
17 Justice, along with a second set of fingerprints for the purpose of  
18 searching the records of the Federal Bureau of Investigation, or  
19 to comply with paragraph (1) of subdivision (h), prior to the  
20 person's employment, residence, or initial presence in the  
21 community care facility. These fingerprints shall be on a card  
22 provided by the State Department of Social Services or sent by  
23 electronic transmission in a manner approved by the State  
24 Department of Social Services and the Department of Justice for  
25 the purpose of obtaining a permanent set of fingerprints, and  
26 shall be submitted to the Department of Justice by the licensee. A  
27 licensee's failure to submit fingerprints to the Department of  
28 Justice or to comply with paragraph (1) of subdivision (h), as  
29 required in this section, shall result in the citation of a deficiency  
30 and the immediate assessment of civil penalties in the amount of  
31 one hundred dollars (\$100) per violation, per day for a maximum  
32 of five days, unless the violation is a second or subsequent  
33 violation within a 12-month period in which case the civil  
34 penalties shall be in the amount of one hundred dollars (\$100)  
35 per violation for a maximum of 30 days, and shall be grounds for  
36 disciplining the licensee pursuant to Section 1550. The  
37 department may assess civil penalties for continued violations as  
38 permitted by Section 1548. The fingerprints shall then be  
39 submitted to the State Department of Social Services for  
40 processing. Upon request of the licensee, who shall enclose a



1 self-addressed stamped postcard for this purpose, the Department  
2 of Justice shall verify receipt of the fingerprints.

3 (2) Within 14 calendar days of the receipt of the fingerprints,  
4 the Department of Justice shall notify the State Department of  
5 Social Services of the criminal record information, as provided  
6 for in subdivision (a). If no criminal record information has been  
7 recorded, the Department of Justice shall provide the licensee  
8 and the State Department of Social Services with a statement of  
9 that fact within 14 calendar days of receipt of the fingerprints.  
10 Documentation of the individual's clearance or exemption shall  
11 be maintained by the licensee and be available for inspection. If  
12 new fingerprints are required for processing, the Department of  
13 Justice shall, within 14 calendar days from the date of receipt of  
14 the fingerprints, notify the licensee that the fingerprints were  
15 illegible. When live-scan technology is operational, as defined in  
16 Section 1522.04, the Department of Justice shall notify the State  
17 Department of Social Services, as required by that section, and  
18 shall also notify the licensee by mail, within 14 days of electronic  
19 transmission of the fingerprints to the Department of Justice, if  
20 the person has no criminal history recorded. A violation of the  
21 regulations adopted pursuant to Section 1522.04 shall result in  
22 the citation of a deficiency and an immediate assessment of civil  
23 penalties in the amount of one hundred dollars (\$100) per  
24 violation, per day for a maximum of five days, unless the  
25 violation is a second or subsequent violation within a 12-month  
26 period in which case the civil penalties shall be in the amount of  
27 one hundred dollars (\$100) per violation for a maximum of 30  
28 days, and shall be grounds for disciplining the licensee pursuant  
29 to Section 1550. The department may assess civil penalties for  
30 continued violations as permitted by Section 1548.

31 (3) Except for persons specified in paragraph (2) of  
32 subdivision (b), the licensee shall endeavor to ascertain the  
33 previous employment history of persons required to be  
34 fingerprinted under this subdivision. If it is determined by the  
35 State Department of Social Services, on the basis of the  
36 fingerprints submitted to the Department of Justice, that the  
37 person has been convicted of, or is awaiting trial for, a sex  
38 offense against a minor, or has been convicted for an offense  
39 specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal  
40 Code, or a felony, the State Department of Social Services shall

1 notify the licensee to act immediately to terminate the person's  
2 employment, remove the person from the community care  
3 facility, or bar the person from entering the community care  
4 facility. The State Department of Social Services may  
5 subsequently grant an exemption pursuant to subdivision (g). If  
6 the conviction or arrest was for another crime, except a minor  
7 traffic violation, the licensee shall, upon notification by the State  
8 Department of Social Services, act immediately to either (A)  
9 terminate the person's employment, remove the person from the  
10 community care facility, or bar the person from entering the  
11 community care facility; or (B) seek an exemption pursuant to  
12 subdivision (g). The State Department of Social Services shall  
13 determine if the person shall be allowed to remain in the facility  
14 until a decision on the exemption is rendered. A licensee's failure  
15 to comply with the department's prohibition of employment,  
16 contact with clients, or presence in the facility as required by this  
17 paragraph shall be grounds for disciplining the licensee pursuant  
18 to Section 1550.

19 (4) The department may issue an exemption on its own motion  
20 pursuant to subdivision (g) if the person's criminal history  
21 indicates that the person is of good character based on the age,  
22 seriousness, and frequency of the conviction or convictions. The  
23 department, in consultation with interested parties, shall develop  
24 regulations to establish the criteria to grant an exemption  
25 pursuant to this paragraph.

26 (5) Concurrently with notifying the licensee pursuant to  
27 paragraph (3), the department shall notify the affected individual  
28 of his or her right to seek an exemption pursuant to subdivision  
29 (g). The individual may seek an exemption only if the licensee  
30 terminates the person's employment or removes the person from  
31 the facility after receiving notice from the department pursuant to  
32 paragraph (3).

33 (d) (1) Before issuing a license, special permit, or certificate  
34 of approval to any person or persons to operate or manage a  
35 foster family home or certified family home as described in  
36 Section 1506, the State Department of Social Services or other  
37 approving authority shall secure from an appropriate law  
38 enforcement agency a criminal record to determine whether the  
39 applicant or any person specified in subdivision (b) has ever been  
40 convicted of a crime other than a minor traffic violation or

1 arrested for any crime specified in Section 290 of the Penal  
2 Code, for violating Section 245 or 273.5, subdivision (b) of  
3 Section 273a or, prior to January 1, 1994, paragraph (2) of  
4 Section 273a of the Penal Code, or for any crime for which the  
5 department cannot grant an exemption if the person was  
6 convicted and the person has not been exonerated.

7 (2) The criminal history information shall include the full  
8 criminal record, if any, of those persons.

9 (3) Neither the Department of Justice nor the State Department  
10 of Social Services may charge a fee for the fingerprinting of an  
11 applicant for a license, special permit, or certificate of approval  
12 described in this subdivision. The record, if any, shall be taken  
13 into consideration when evaluating a prospective applicant.

14 (4) The following shall apply to the criminal record  
15 information:

16 (A) If the applicant or other persons specified in subdivision  
17 (b) have convictions that would make the applicant's home unfit  
18 as a foster family home or a certified family home, the license,  
19 special permit, or certificate of approval shall be denied.

20 (B) If the State Department of Social Services finds that the  
21 applicant, or any person specified in subdivision (b) is awaiting  
22 trial for a crime other than a minor traffic violation, the State  
23 Department of Social Services or other approving authority may  
24 cease processing the application until the conclusion of the trial.

25 (C) For the purposes of this subdivision, a criminal record  
26 clearance provided under Section 8712 of the Family Code may  
27 be used by the department or other approving agency.

28 (D) An applicant for a foster family home license or for  
29 certification as a family home, and any other person specified in  
30 subdivision (b), shall submit a set of fingerprints to the  
31 Department of Justice for the purpose of searching the criminal  
32 records of the Federal Bureau of Investigation, in addition to the  
33 criminal records search required by subdivision (a). If an  
34 applicant meets all other conditions for licensure, except receipt  
35 of the Federal Bureau of Investigation's criminal history  
36 information for the applicant and all persons described in  
37 subdivision (b), the department may issue a license, or the foster  
38 family agency may issue a certificate of approval, if the  
39 applicant, and each person described in subdivision (b), has  
40 signed and submitted a statement that he or she has never been

1 convicted of a crime in the United States, other than a traffic  
2 infraction, as defined in paragraph (1) of subdivision (a) of  
3 Section 42001 of the Vehicle Code. If, after licensure or  
4 certification, the department determines that the licensee,  
5 certified foster parent, or any person specified in subdivision (b)  
6 has a criminal record, the license may be revoked pursuant to  
7 Section 1550 and the certificate of approval revoked pursuant to  
8 subdivision (b) of Section 1534. The department may also  
9 suspend the license pending an administrative hearing pursuant  
10 to Section 1550.5.

11 (5) Any person specified in this subdivision shall, as a part of  
12 the application, be fingerprinted and sign a declaration under  
13 penalty of perjury regarding any prior criminal convictions or  
14 arrests for any crime against a child, spousal or cohabitant abuse  
15 or, any crime for which the department cannot grant an  
16 exemption if the person was convicted and shall submit these  
17 fingerprints to the licensing agency or other approving authority.

18 (6) (A) The foster family agency shall obtain fingerprints  
19 from certified home applicants and from persons specified in  
20 subdivision (b) and shall submit them directly to the Department  
21 of Justice or send them by electronic transmission in a manner  
22 approved by the State Department of Social Services. A foster  
23 family home licensee or foster family agency shall submit these  
24 fingerprints to the Department of Justice, along with a second set  
25 of fingerprints for the purpose of searching the records of the  
26 Federal Bureau of Investigation or to comply with paragraph (1)  
27 of subdivision (b) prior to the person's employment, residence, or  
28 initial presence. A foster family agency's failure to submit  
29 fingerprints to the Department of Justice, or comply with  
30 paragraph (1) of subdivision (h), as required in this section, shall  
31 result in a citation of a deficiency, and the immediate civil  
32 penalties of one hundred dollars (\$100) per violation, per day for  
33 a maximum of five days, unless the violation is a second or  
34 subsequent violation within a 12-month period in which case the  
35 civil penalties shall be in the amount of one hundred dollars  
36 (\$100) per violation for a maximum of 30 days, and shall be  
37 grounds for disciplining the licensee pursuant to Section 1550. A  
38 violation of the regulation adopted pursuant to Section 1522.04  
39 shall result in the citation of a deficiency and an immediate  
40 assessment of civil penalties in the amount of one hundred

dollars (\$100) per violation, per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars (\$100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family

1 agency, whichever is applicable, unless the director grants an  
2 exemption pursuant to subdivision (g). A licensee's failure to  
3 comply with the department's prohibition of employment,  
4 contact with clients, or presence in the facility as required by  
5 paragraph (3) of subdivision (c) shall be grounds for disciplining  
6 the licensee pursuant to Section 1550.

7 (e) The State Department of Social Services may not use a  
8 record of arrest to deny, revoke, or terminate any application,  
9 license, employment, or residence unless the department  
10 investigates the incident and secures evidence, whether or not  
11 related to the incident of arrest, that is admissible in an  
12 administrative hearing to establish conduct by the person that  
13 may pose a risk to the health and safety of any person who is or  
14 may become a client. The State Department of Social Services is  
15 authorized to obtain any arrest or conviction records or reports  
16 from any law enforcement agency as necessary to the  
17 performance of its duties to inspect, license, and investigate  
18 community care facilities and individuals associated with a  
19 community care facility.

20 (f) (1) For purposes of this section or any other provision of  
21 this chapter, a conviction means a plea or verdict of guilty or a  
22 conviction following a plea of nolo contendere. Any action that  
23 the State Department of Social Services is permitted to take  
24 following the establishment of a conviction may be taken when  
25 the time for appeal has elapsed, when the judgment of conviction  
26 has been affirmed on appeal, or when an order granting probation  
27 is made suspending the imposition of sentence, notwithstanding  
28 a subsequent order pursuant to Sections 1203.4 and 1203.4a of  
29 the Penal Code permitting the person to withdraw his or her plea  
30 of guilty and to enter a plea of not guilty, or setting aside the  
31 verdict of guilty, or dismissing the accusation, information, or  
32 indictment. For purposes of this section or any other provision of  
33 this chapter, the record of a conviction, or a copy thereof certified  
34 by the clerk of the court or by a judge of the court in which the  
35 conviction occurred, shall be conclusive evidence of the  
36 conviction. For purposes of this section or any other provision of  
37 this chapter, the arrest disposition report certified by the  
38 Department of Justice, or documents admissible in a criminal  
39 action pursuant to Section 969b of the Penal Code, shall be prima  
40 facie evidence of the conviction, notwithstanding any other

1 provision of law prohibiting the admission of these documents in  
2 a civil or administrative action.

3 (2) For purposes of this section or any other provision of this  
4 chapter, the department shall consider criminal convictions from  
5 another state or federal court as if the criminal offense was  
6 committed in this state.

7 (g) (1) After review of the record, the director may grant an  
8 exemption from disqualification for a license or special permit as  
9 specified in paragraphs (1) and (4) of subdivision (a), or for a  
10 license, special permit, or certificate of approval as specified in  
11 paragraphs (4) and (5) of subdivision (d), or for employment,  
12 residence, or presence in a community care facility as specified  
13 in paragraphs (3), (4), and (5) of subdivision (c), if the director  
14 has substantial and convincing evidence to support a reasonable  
15 belief that the applicant and the person convicted of the crime, if  
16 other than the applicant, are of good character as to justify  
17 issuance of the license or special permit or granting an exemption  
18 for purposes of subdivision (c). Except as otherwise provided in  
19 this subdivision, an exemption may not be granted pursuant to  
20 this subdivision if the conviction was for any of the following  
21 offenses:

22 (A) (i) An offense specified in Section 220, 243.4, or 264.1,  
23 subdivision (a) of Section 273a or, prior to January 1, 1994,  
24 paragraph (1) of Section 273a, Section 273d, 288, or 289,  
25 subdivision (a) of Section 290, or Section 368 of the Penal Code,  
26 or was a conviction of another crime against an individual  
27 specified in subdivision (c) of Section 667.5 of the Penal Code.

28 (ii) Notwithstanding clause (i), the director may grant an  
29 exemption regarding the conviction for an offense described in  
30 paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5  
31 of the Penal Code, if the employee or prospective employee has  
32 been rehabilitated as provided in Section 4852.03 of the Penal  
33 Code, has maintained the conduct required in Section 4852.05 of  
34 the Penal Code for at least 10 years, and has the recommendation  
35 of the district attorney representing the employee's county of  
36 residence, or if the employee or prospective employee has  
37 received a certificate of rehabilitation pursuant to Chapter 3.5  
38 (commencing with Section 4852.01) of Title 6 of Part 3 of the  
39 Penal Code.

1 (B) A felony offense specified in Section 729 of the Business  
2 and Professions Code or Section 206 or 215, subdivision (a) of  
3 Section 347, subdivision (b) of Section 417, or subdivision (a) of  
4 Section 451 of the Penal Code.

5 (2) The department may not prohibit a person from being  
6 employed or having contact with clients in a facility on the basis  
7 of a denied criminal record exemption request or arrest  
8 information unless the department complies with the  
9 requirements of Section 1558.

10 (h) (1) For purposes of compliance with this section, the  
11 department may permit an individual to transfer a current  
12 criminal record clearance, as defined in subdivision (a), from one  
13 facility to another, as long as the criminal record clearance has  
14 been processed through a state licensing district office, and is  
15 being transferred to another facility licensed by a state licensing  
16 district office. The request shall be in writing to the State  
17 Department of Social Services, and shall include a copy of the  
18 person's driver's license or valid identification card issued by the  
19 Department of Motor Vehicles, or a valid photo identification  
20 issued by another state or the United States government if the  
21 person is not a California resident. Upon request of the licensee,  
22 who shall enclose a self-addressed envelope for this purpose, the  
23 State Department of Social Services shall verify whether the  
24 individual has a clearance that can be transferred.

25 (2) The State Department of Social Services shall hold  
26 criminal record clearances in its active files for a minimum of  
27 two years after an employee is no longer employed at a licensed  
28 facility in order for the criminal record clearance to be  
29 transferred.

30 (3) The following shall apply to a criminal record clearance or  
31 exemption from the department or a county office with  
32 department delegated licensing authority:

33 (A) A county office with department delegated licensing  
34 authority may accept a clearance or exemption from the  
35 department.

36 (B) The department may accept a clearance or exemption from  
37 any county office with department delegated licensing authority.

38 (C) A county office with department delegated licensing  
39 authority may accept a clearance or exemption from any other  
40 county office with department delegated licensing authority.



1 (4) With respect to notifications issued by the Department of  
2 Justice pursuant to Section 11105.2 of the Penal Code concerning  
3 an individual whose criminal record clearance was originally  
4 processed by the department or a county office with department  
5 delegated licensing authority, all of the following shall apply:

6 (A) The Department of Justice shall process a request from the  
7 department or a county office with department delegated  
8 licensing authority to receive the notice only if all of the  
9 following conditions are met:

10 (i) The request shall be submitted to the Department of Justice  
11 by the agency to be substituted to receive the notification.

12 (ii) The request shall be for the same applicant type as the type  
13 for which the original clearance was obtained.

14 (iii) The request shall contain all prescribed data elements and  
15 format protocols pursuant to a written agreement between the  
16 department and the Department of Justice.

17 (B) (i) On or before January 7, 2005, the department shall  
18 notify the Department of Justice of all county offices that have  
19 department delegated licensing authority.

20 (ii) The department shall notify the Department of Justice  
21 within 15 calendar days of the date on which a new county office  
22 receives department delegated licensing authority or a county's  
23 delegated licensing authority is rescinded.

24 (C) The Department of Justice shall charge the department or  
25 a county office with department delegated licensing authority a  
26 fee for each time a request to substitute the recipient agency is  
27 received for purposes of this paragraph. This fee shall not exceed  
28 the cost of providing the service.

29 (i) The full criminal record obtained for purposes of this  
30 section may be used by the department or by a licensed adoption  
31 agency as a clearance required for adoption purposes.

32 (j) If a licensee or facility is required by law to deny  
33 employment or to terminate employment of any employee based  
34 on written notification from the state department that the  
35 employee has a prior criminal conviction or is determined  
36 unsuitable for employment under Section 1558, the licensee or  
37 facility shall not incur civil liability or unemployment insurance  
38 liability as a result of that denial or termination.

39 (k) (1) The Department of Justice shall coordinate with the  
40 State Department of Social Services to establish and implement

1 an automated live-scan processing system for fingerprints in the  
2 district offices of the Community Care Licensing Division of the  
3 State Department of Social Services by July 1, 1999. These  
4 live-scan processing units shall be connected to the main system  
5 at the Department of Justice by July 1, 1999, and shall become  
6 part of that department's pilot project in accordance with its  
7 long-range plan. The State Department of Social Services may  
8 charge a fee for the costs of processing a set of live-scan  
9 fingerprints.

10 (2) The Department of Justice shall provide a report to the  
11 Senate and Assembly fiscal committees, the Assembly Human  
12 Services Committee, and to the Senate Health and Human  
13 Services Committee by April 15, 1999, regarding the completion  
14 of backlogged criminal record clearance requests for all facilities  
15 licensed by the State Department of Social Services and the  
16 progress on implementing the automated live-scan processing  
17 system in the two district offices pursuant to paragraph (1).

18 (I) Amendments to this section made in the 1999 portion of the  
19 1999-2000 Regular Session shall be implemented commencing  
20 60 days after the effective date of the act amending this section in  
21 the 1999 portion of the 1999-2000 Regular Session, except that  
22 those provisions for the submission of fingerprints for searching  
23 the records of the Federal Bureau of Investigation shall be  
24 implemented 90 days after the effective date of that act.

25 SEC. 3. Section 362.05 of the Welfare and Institutions Code  
26 is amended to read:

27 362.05. (a) For purposes of this section:

28 (1) "Caregiver" means any licensed or certified foster parent,  
29 approved relative caregiver, or approved nonrelative extended  
30 family member caring for a foster child.

31 (2) "Short-term" means no more than 24 hours.

32 (b) Every child adjudged a dependent child of the juvenile  
33 court shall be entitled to participate in age-appropriate  
34 extracurricular, enrichment, and social activities. No state or  
35 local regulation or policy may prevent or create barriers to  
36 participation in those activities.

37 (c) Every caregiver may arrange for occasional short-term  
38 babysitting of their foster child and allow individuals to supervise  
39 the foster child, as long as the caregiver is acting as a reasonable  
40 and prudent parent when making those arrangements.

1 (d) Each state and local entity shall ensure that private  
2 agencies that provide foster care services to dependent children  
3 have policies consistent with this section. County child welfare  
4 agencies and private agencies shall promote and protect the  
5 ability of dependent children to participate in age-appropriate  
6 extracurricular, enrichment, and social activities. Caregivers shall  
7 use a reasonable and prudent parent standard in determining  
8 whether to give permission for a child residing in foster care to  
9 participate in extracurricular, enrichment, and social activities,  
10 and in selecting appropriate babysitters. The caregiver shall take  
11 reasonable steps to determine the appropriateness of activities for  
12 the child in consideration of the child's age, maturity, and  
13 developmental level, and in selecting appropriate babysitters for  
14 occasional short-term use.

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